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Supreme Court of the United States

OCTOBER TERM, 1967

No. 517

PHIL A. ST. AMANT,

Petitioner,

versus

HERMAN A. THOMPSON,

Respondent.

RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The response of Herman A. Thompson, with respect, shows unto the Honorable Court as follows:

The petition for a writ of certiorari to the Supreme Court of the State of Louisiana filed herein, together with the judgment of the Trial Court, the decision of the Court of Appeal, First Circuit, State of Louisiana, and the decision of the Supreme Court of the State of Louisiana, attached as Appendices A, B, and C, respectfully, accurately reflect the facts of the case, as well as the reasons, with one or two minor exceptions.

On page seven of petitioner's application, counsel states that Thompson admitted to having been a frequent

visitor to the union hall and was "a close friend" of the labor leader Partin. While the record will reflect that Thompson made some trips to the union hall in connection with his duties and was on a friendly basis with Ed Partin, it no where reflects, nor is there anything to indicate, that they were close friends.

The U. S. Supreme Court Rules, Rule 19, provides:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicates the character of reasons which will be considered:
>
> (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.
>
> * * * * *"

A review of the state court decisions, from the trial court through the Supreme Court, clearly reflects that the latest decisions, including *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Garrison v. Louisiana*, 379 U.S. 64 (1964); and, *Rosenblatt v. Baer*, 383 U.S. 75 (1966), were considered and the rules emanating therefrom were applied. While the trial court, the Court of Appeal, First Circuit, and the Louisiana Supreme Court, all concluded that Thompson was a "public official" within the meaning of the Federal Rule, we do not concur in that holding. Be that as it may, the Federal Rule was applied as pronounced in the *New York Times* case and actual malice found to exist under the rule enunciated therein.

We readily concede that this Honorable Court is free to examine the facts, as well as the law, in order to determine whether the correct rules of law have been applied and if so, whether correctly interpreted and applied to the facts. *Hooven and Allison Company v. Evatt*, 324 U.S. 652 (1945). Nevertheless, petitioner in his application for a writ does not complain that the Federal Rule was improperly applied but summarizes his complaint on page ten, as follows:

> "The opinion of the Louisiana Supreme Court did conclude that St. Amant uttered these statements in a reckless disregard as to whether they were true or false (Sup. Ct. Opinion, P. 12). But the Court said this was the mistake for St. Amant. He should have checked more closely the veracity of the statements, and investigated as to the truth of the affidavit and since he didn't do this before he made the statements on the broadcast, he was recklessly disregarding this truth or falsity and thus malice is imputed resulting in liability. This equates ignorance of falsity with knowledge of falsity and imputes malice from both. This is contrary to the *Times* case."

Nothing is further from the truth. Petitioner, Phil A. St. Amant, was engaged in a race for U. S. Senator against the incumbent, U. S. Senator Russell B. Long. Captain Herman Thompson, a Deputy Sheriff for the East Baton Rouge Parish Sheriff's Office, was as far removed from and unconnected with this political race as any other ordinary citizen. In the course of his political campaigning and political speeches, he engaged in mud slinging to the extent that he included any and everyone whose names may have come to him at the moment. When questioned as to whether he gave any thought as to the probable result of connecting innocent persons with such statements,

he promptly replied to the effect that he gave it no thought. It was from such admissions as this that the Trial Court rightfully concluded, and commented on at length in its opinion, that Mr. St. Amant showed a complete lack of regard for the truth or falsity of the statements and consequently found that malice existed. Malice was not imputed, as is argued by counsel for the applicant, and to the contrary, malice was found to exist from the admissions of the petitioner, as well as from the inferences to be gathered from the overall facts. Whether statements were made in ignorance of their falsity or with knowledge of their falsity, is a matter of no moment. In the instant case, petitioner made statements with utter disregard of whether they were true or false.

WHEREFORE, respondent respectfully prays that the petition for a writ of certiorari be denied and further prays for such other relief in the premises as the Court may deem proper and just.

Respectfully submitted,

By: /s/ ROBERT L. KLEINPETER

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CERTIFICATE

I, the undersigned, of counsel for respondent, hereby certify that I have served a copy of the foregoing response upon Moses C. Scharff, Attorney for petitioner, Whitney Bank Building, New Orleans, Louisiana 70112, by mailing a copy thereof, postage prepaid, to him at said address.

/s/ ROBERT L. KLEINPETER
Attorney for Respondent.